

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: July 28, 2014

AGENDA ITEM: Resolution Adopting Public Defense Standards	AGENDA SECTION: Legal	
PREPARED BY: Gloria Hirashima, Chief Administrative Officer	AGENDA NUMBER:	
ATTACHMENTS:	APPROVED BY:	
	MAYOR	CAO
BUDGET CODE:	AMOUNT:	

RCW 10.101.030 requires the City of Marysville ("City") to adopt standards for the delivery of public defense services. The Washington State Bar Association Board of Governors approved standards for indigent defense services on June 11, 2011 and the Washington State Supreme Court issued New Standards for Indigent Defense by Order dated June 15, 2012, which were effective upon adoption except Standard 3.4 which includes mandated caseload limits that have a scheduled effective date of January 1, 2015.

In drafting the proposed public defense standards, the city also considered the Memorandum Decision dated December 4, 2013, in *Wilbur v. City of Mount Vernon*, United States District Court for the Western District of Washington Case No. C11-1101RSL, which provides additional guidance on the delivery of public defense services, including municipal responsibilities for funding, administering and monitoring a constitutionally adequate public defense program under the Sixth Amendment to the U.S. Constitution and *Gideon v. Wainwright*, 372 U.S. 335 (1963).

RECOMMENDED ACTION: Approve resolution establishing standards for indigent defense services.
--

COUNCIL ACTION:

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF MARYSVILLE, WASHINGTON
ADOPTING NEW STANDARDS FOR THE DELIVERY OF PUBLIC
DEFENDER SERVICES PURSUANT TO RCW 10.101.030**

WHEREAS, RCW 10.101.030 requires the City of Marysville ("City") to adopt standards for the delivery of public defense services, specifies the topics to be addressed in such standards, and urges local legislative bodies to use the standards endorsed by the Washington State Bar Association for indigent defense as guidelines; and

WHEREAS, the Washington State Bar Association Board of Governors approved standards for indigent defense services on June 11, 2011; and

WHEREAS, the Washington State Supreme Court issued New Standards for Indigent Defense by Order dated June 15, 2012, which were effective upon adoption except Standard 3.4, mandated caseload limits; and

WHEREAS, the Memorandum Decision dated December 4, 2013, in *Wilbur v. City of Mount Vernon*, United States District Court for the Western District of Washington Case No. C11-1101RSL, provides additional guidance on the delivery of public defense services, including municipal responsibilities for funding, administering and monitoring a constitutionally adequate public defense program under the Sixth Amendment to the U.S. Constitution and *Gideon v. Wainwright*, 372 U.S. 335 (1963); and

WHEREAS, the City Council of Marysville deems it to be in the public interest to proceed with the adoption and implementation of the standards for the delivery of public defense services as provided herein;

NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The following public defense standards are hereby adopted:

STATEMENT OF INTENT AND INTERPRETATION: These standards are adopted in order to comply with the requirements of RCW 10.101.030, the rules established by the Washington State Supreme Court, and the requirements of the Sixth Amendment to the U.S. Constitution. The provisions of these standards shall be construed to effectuate their stated purpose, which is to provide standards that afford quality representation in the provision of public defense to indigent criminal defendants. "Quality representation" describes the minimum level of attention, care, and skill that Washington citizens would expect of their State's criminal justice system meeting all legal requirements for the provision of public defense services. These standards may be amended from time to time to reflect changes in the rules established by the

Washington State Supreme Court, guidance offered by the Washington State Bar Association, or decisions of Washington State and federal courts.

1. DUTIES AND RESPONSIBILITIES OF COUNSEL.

1.1 Public defense services (“the Services”) shall be provided to all clients in a professional, skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules and decisions defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

1.2 Services shall be provided to indigent clients whose eligibility has been determined by the City of Marysville through an established screening process.

1.3 All Public Defenders providing services by contract shall certify their compliance with the standards for indigent defense by filing a Certification of Compliance quarterly, as required by CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Such forms shall be filed with the Marysville Municipal Court. Copies of each Public Defender's certification shall be provided to the City.

2. QUALIFICATIONS OF ATTORNEYS.

2.1 Every Public Defender performing services under contract with the City (herein "Public Defense" or "Public Defender") or appointed by the Marysville Municipal Court in a particular case shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State. Interns may assist in the provision of services so long as such interns comply with APR 9, and are trained and supervised by contract Public Defenders.

2.2 In a firm providing public defense services, one attorney shall be designated as the lead attorney. The designated Public Defender or the designated lead attorney in a firm providing public defense services by contract shall have a minimum of five years of experience in a practice emphasizing criminal defense.

2.3 Attorneys and Rule 9 interns performing services under contract shall:

2.2.1 be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area;

2.2.2 be familiar with the Washington Rules of Professional Conduct (WRPC);

2.2.3 be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association;

2.2.4 be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and

2.2.5 be familiar with mental health issues and be able to identify the need to obtain expert services; and

2.3 The City Attorney, City Prosecutor, Chief of Police and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services. Nothing herein shall be interpreted to prohibit the City Attorney, City Prosecutor or Chief of Police from performing the normal functions of his/her office, including by way of illustration, the drafting of contracts, ordinances and resolutions.

3. TRAINING, SUPERVISION, AND EVALUATION OF ATTORNEYS.

3.1 The designated lead attorney in a firm providing public defender services shall be responsible for training, supervising, and evaluating all attorneys in the firm providing public defender services.

3.2 No attorney in a firm providing public defender services shall be assigned sole or primary responsibility for a case unless the lead attorney determines that attorney has the required training, experience, knowledge and skill.

3.3 All attorneys providing public defense services shall participate in a minimum of seven hours of continuing legal education per year in areas relating to criminal defense law and practice.

3.4 In addition to required continuing legal education (CLE) training, in the event that seven (7) or more attorneys perform services to the City by the same contract and in the same entity, the contract for services shall provide for in-house training. Proposals made in response to requests for proposals for pursuit of a contract for Public Defense Services shall provide information regarding in-house training, the development of manuals to inform new attorneys of the rules and procedures of the Marysville Municipal Court and encourage the opportunity to attend courses that foster trial advocacy skills. The Public Defender is encouraged to obtain and review professional publications and other media relating to criminal defense.

4. COMPENSATION OF COUNSEL.

The City has a constitutional obligation to provide Public Defense Services that ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience. For conflict and other assigned counsel, reasonable compensation shall also be provided. Compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned caseload. Contracted and assigned counsel shall be compensated for reasonable out of pocket expenses.

4.1 The contract shall provide for extraordinary compensation in the event that a particular case requires an extraordinary amount of time and preparation. The conditions under extraordinary fees may be charged will be defined within any contract.

4.2 Attorneys with a conflict of interest shall not be required to compensate the new, substituted attorney under the contract.

5. ADMINISTRATIVE EXPENSES AND SUPPORT SERVICES.

5.1 All contracts for Public Defense shall provide sufficient amounts, in addition to reasonable compensation for attorneys, for adequate administrative expenses and supports services to provide for adequate staffing and other costs associated with the day to day management of a law office. Administrative expenses include travel, telephones, law library including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training. Support services include secretaries, word processing staff, paralegals, and access to translators, social work staff, mental health professionals, and immigration law advice, as appropriate,

5.2 Private offices and/or conference rooms shall be available which are convenient to defendants charged in the Marysville Municipal Court and allow the maintenance of confidentiality. Public Defenders shall maintain a telephone system, internet access and postal address to enable convenient communications by clients.

6. RESPONSIBILITY FOR EXPERT WITNESS FEES AND OTHER COSTS ASSOCIATED WITH REPRESENTATION

The expenses of expert witnesses and investigative costs in appropriate cases shall be borne by the City.

6.1 The Public Defense Contract shall provide reasonable compensation for an expert of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City officials.

6.2 The services of expert witnesses will be paid directly by the City when approved by the Court through ex parte motion.

6.3 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Contracts for Public Defense Services may include investigative services as a part of reimbursed overhead included in the contract compensation for investigators employed by a firm.

7. CASELOAD LIMITS AND TYPES OF CASES.

7.1 The Public Defender shall provide Services to all eligible person charged in the Marysville Municipal Court with violation of the City's ordinances defining misdemeanor and gross misdemeanor crimes for which incarceration is a possible consequence upon conviction, and RALJ appeals of convictions to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation.

7.2 The caseload of a full time public defender or assigned counsel shall not exceed four hundred cases per year.

7.3 If a Public Defender or assigned counsel is carrying a caseload consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed caseload of felonies and misdemeanors, these standards shall be adjusted proportionally to determine a full caseload. If the contract or assigned counsel also maintains a private law practice, the caseload shall be based upon the percentage of time that the lawyer devotes to public defense with the City.

7.4 The caseload of a Public Defender who also maintains a private practice shall not exceed the number of cases resulting from multiplying 400 cases by the percentage of his or her time the public defender devotes to providing public defense services under all contracts for public defense services.

7.5 A case credit is a unit of work computed as follows:

7.5.1 The Public Defender will receive no credit for a misdemeanor case when the court dismisses the case upon the motion of the prosecuting attorney before any legal service has been performed. Any case in which the Public Defender's duty is limited to explaining to the individual defendant the implication of any action by the City Attorney to reduce a criminal matter to a civil infraction, bail forfeiture or dismissal, shall not be counted as a case assignment to the Public Defender's office. The Public Defender shall receive no work for credit on cases which are substantively identified as conflicts, with the exception of cases in which (after work has been performed) the client obtains a new attorney at his own expense or through a request to the court, or for other extraordinary circumstances approved by the City, including but not limited to, information or evidence which the Public Defender could not have reasonably known or discovered at the time of the initial conflicts check.

7.5.2 Each pre-trial case is counted only once, irrespective of any subsequent reappointment pursuant to when a client fails to appear (FTA). The case will be counted at the time of first appointment. In the event a defendant has been previously represented by a Public Defender and that case was previously counted when the case was in pre-trial status, it will not be counted again unless the defendant FTA's at a post-conviction hearing. Post-conviction cases where defendants FTA and are subsequently reappointed to the Public Defender will be counted again; however, this will occur only once, no matter how many times a defendant FTA's and the Public Defender is reappointed when the case is in post-conviction status, the case will be counted only once.

7.5.3 A criminal matter shall be defined as one (1) case for billing purposes no matter how many charges are filed against the individual, so long as all the charges arise out of the same incident. Any additional charges filed against the same defendant, arising out of a separate incident, shall be counted by the Public Defender as a new case.

7.5.4 If the Public Defender is required to attend an appearance calendar, the Public Defender shall count such attendance at a minimum, as a case, regardless of whether he or she is actually appointed to represent a client. If appointed, a case count shall be determined as provided above.

7.6 The request for qualifications process for selection of a Public Defender and Public Defender Counsel shall strive to obtain a Public Defender whose experience and training is sufficient to comport with the caseload assumptions and credits assigned. Attorneys assigned to RALJ appeals shall have a minimum of one year's experience in RALJ appeals or in the event multiple attorneys perform services in the contract, a minimum of one attorney assigned to or supervising RALJ appeals shall have such experience.

7.7 The standards provided herein for caseloads may be adjusted upward depending upon the complexity of a particular case. A Public Defender may request to have the weighting for an unusually complex case not addressed adequately by these standards may be increased depending upon the complexity and requirements of the case, and such adjustment shall not be unreasonably refused by the City. The maximum caseload for a particular attorney shall be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

8. LIMITATIONS ON PRIVATE PRACTICE.

Subject to the provisions of Standard Six on Caseload Limits, there is no prohibition on a public defender engaging in private practice, provided, such private practice does not interfere with performance of Public Defense Services and complies with all requirements of the Rules of Professional Conduct.

9. REPORTS OF ATTORNEY ACTIVITY AND VOUCHERS.

9.1 Public Defense Services shall maintain a case reporting system and information management system. The Public Defender or firm providing public defense services shall provide monthly reports to the City regarding the caseloads generated under the contract for each attorney and intern providing services under the contract,

9.2 The monthly caseload reports to be provided by the Public Defender shall identify the number of cases assigned, the case count year-to-date, and records of the time expended on each case. The monthly caseload report shall also include information relating to calculation of caseload under public defense contracts with other jurisdictions and private

practice caseload to permit the City to monitor and evaluate compliance with these Standards. The City may require supplementation of reports if the information provided does not allow evaluation of the Public Defender's compliance with caseload limits.

9.3 Requests for payment shall be made by voucher on a form approved by the City Administrator and supported by the monthly caseload report.

10. DISPOSITION OF CLIENT COMPLAINTS.

10.1 The Chief Administrative Officer shall identify a procedure for complaints regarding the provision of services by the Public Defender.

10.2 Public Defender Service Providers shall first be afforded an opportunity to resolve any complaint.

10.3 Complaints regarding the provision of services under the contract, or regarding a violation of any of these standards shall be investigated by the Chief Administrative Officer provided, however, that any complaint regarding trial strategy or any other matter which could breach confidentiality shall be referred to the Washington State Bar Association or the presiding judge of the Marysville Municipal Court. Nothing in this section or in these standards should be interpreted to require the Public Defender or any indigent defendant to breach any duty of confidentiality, including, but not limited to trial strategy

11. CAUSE FOR TERMINATION OR CONTRACT OR REMOVAL OF ATTORNEY.

11.1 The City may terminate the contract for Public Defense Services either "for cause," after such notice and opportunity to cure as is warranted in the circumstances, or "for convenience," on 90 days notice of termination.

11.2 Removal by the Court of counsel from representation normally should not occur over the objection of the attorney and the client.

12. SUBSTITUTION OF ATTORNEYS OR ASSIGNMENT OF CONTRACTS.

12.1 The contract for Public Defense Services shall not be assignable without the express written consent of the City.

12.2 In the event of conflict or removal of the Public Defender, Conflict Counsel shall be assigned, either by separate contract with Conflict Counsel or by court appointment. In the event that alternative or Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of an alternative or Conflict Counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.

12.3 Conflict Counsel shall adhere to the standards established by this resolution, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this agreement.

13. NON-DISCRIMINATION.

Non-Discrimination. The Public Defender shall comply with all federal, state and local non-discrimination laws or ordinances. The duty of nondiscrimination relates not only to the provision of services by the Public Defender to the clients, but also with respect to the hiring and employment practices of the Public Defender Contractor.

Section 3. The City Clerk is directed to provide a certified copy of the Standards to the Presiding Judge of the Marysville Municipal Court.

Section 4. **EFFECTIVE DATE.**

The provisions of this resolution shall be effective upon adoption.

RESOLVED:

CITY OF MARYSVILLE

Jon Nehring, Mayor

ATTEST:

April O'Brien, Deputy City Clerk

APPROVED AS TO FORM:

Grant K. Weed, City Attorney